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July 18, 1972

National Security Decision Memorandum 177

DDI 229-72

TO: The Secretary of State  
The Secretary of Defense  
The Secretary of Commerce  
The Secretary of the Interior

SUBJECT: July-August Preparatory Meeting for the  
Law of the Sea Conference

The President has reviewed the June 20 report of the Interagency Law of the Sea Task Force together with the formal agency comments relating thereto. He has approved the report as the negotiating instructions for the U.S. Delegation to the July-August meeting of the U.N. Seabed Committee, subject to the specific guidance and interpretations set forth below. In so doing, the President reaffirms the continuing importance attached to gaining international acceptance of U.S. oceans policy positions on marine resources, the breadth of the territorial sea and free transit through and over international straits.

Straits. In tabling US proposals for strict liability, the Delegation should reserve the question of upper limits of liability pending further study.

With regard to state aircraft transiting straits, the delegation should propose that the law of the sea treaty provide that state aircraft, exercising the right of free transit provided for in the U.S. straits proposal, (a) will normally respect International Civil Aviation Organization (ICAO) standards, recommended practices and procedures as they apply to civil aircraft over the high seas and (b) will at all times operate with due regard for the safety of navigation of civil aircraft. Should reactions of other delegations lead the representatives of the Departments of State and Defense to agree that this formulation is inadequate to protect the viability of our straits proposal, the delegation may put forward the formulation stated in Section A, Recommendation 3 of the task force report.

Archipelagos. With respect to archipelago claims, the U.S. position should remain that of non-recognition, bearing in mind the need to define

more clearly the nature of such claims. During the July-August meeting, the delegation is authorized without committing the United States to undertake private exploratory discussions with Indonesia and other archipelago states indicating U.S. willingness to cooperate with such states in considering possible formulations, including the formulations presented as options in the task force report, of archipelagic claims that might satisfactorily accommodate US marine resource and navigation interests.

Fisheries. The delegation should continue to seek international acceptance of US fisheries positions that 1) give the coastal state effective regulatory and economic control over coastal species and over salmon throughout their migratory range on the high seas, subject to international standards and review regarding conservation and maximum utilization of coastal and anadromous fisheries, and 2) that provide for international regulation of tuna fishing.

In pursuit of these objectives, the delegation is authorized to indicate privately US willingness to support a possible fisheries compromise based on a fixed zonal approach, provided:

- there is appropriate advance consultation with key states, including major, distant-water fishing states, and with US fishing industry representatives on the delegation, and

- it is the judgment of the Delegation that this tactic will best promote achievement of US fisheries objectives.

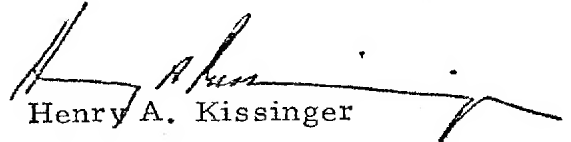
Marine Pollution. US policy on land-based pollution, ocean dumping and seabeds pollution as set forth in the Interagency Law of the Sea Task Force report is approved. With regard to pollution from vessels, the Delegation should seek international acceptance of positions that would maintain the Intergovernmental Maritime Consultative Organization (IMCO) as the major international forum for dealing with pollution originating from vessels. During the July-August meeting, the delegation is authorized to propose expansion of the application of the 1969 Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, as recommended in the report. The Delegation should not propose either a zonal approach to pollution control or an expansion of the rights of national enforcement vessels to take pollution enforcement action on the high seas.

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The President has directed that the Interagency Law of the Sea Task Force submit a report on the July-August meeting of the U.N. Seabed Committee together with recommended instructions on the Law of the Sea Conference for the U.S. Delegation to the U.N. General Assembly this fall. The report should be submitted no later than September 29, 1972 for consideration by the NSC Senior Review Group.

  
Henry A. Kissinger

cc: The Secretary of Transportation  
The Director of Central Intelligence

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DATE: 8.14.72

TO: Messrs. ~~Proctor~~ and [REDACTED]

FROM: [REDACTED]

STATINTL

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SUBJECT: Law of the Sea, or Much Ado about  
Not Much

REMARKS:

BACKGROUND

The UN Seabeds Committee is now meeting in Geneva to prepare for a Law of the Sea Conference in 1973. The Committee wants to draw up a list of issues for discussion at subsequent meetings.

One item will be the question of transit through international straits. Transit used to be allowed on the basis of "innocent passage," a rather vague formulation which in practice often left passage up to the whim of the coastal state. The small states want to keep it that way. The U.S. and other major maritime powers (such as the UK and USSR) favor free transit through all international straits.

ISSUE

The small states proposed that the committee in Geneva list the topic as "Straits - Innocent Passage." The U.S. and other big powers would not buy that title, so Spain proposed a compromise: list the item as "All Topics on Straits." DoD members of the delegation in Geneva are [REDACTED] balking; they feel that unless

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Subject: Law of the Sea

"free transit" is in the list of topics, the U.S. will be at a procedural disadvantage. State is willing to go along with the Spanish compromise figuring that no matter how the straits topic is listed we can discuss what we want to when it comes up.

RECOMMENDATION

The burning issue has now been passed to the White House for resolution. It does not seem at all appropriate for CIA to try to get into this act for at least three reasons:

(1) It is a question not of substance but of procedure.

(2) CIA is not represented on the delegation at Geneva and thus is not an action agency in this matter and

(3) if we have anything to say at all, we'll have a chance later on.

NSDM 177 (attached) calls for preparation of a report in September to take stock of the Geneva meetings and recommend instructions for the U.S. delegation to the UN General Assembly this fall. We are represented on the Interagency Task Force which will draft that report.

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